IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 10551 of 2004(F)

PETITIONER:

M.A.ANILKUMAR,
ANITHA BHAVAN, CHITTAYAM, PANAYAM P.O.,
PERINADU, KOLLAM.

BY ADV. SRI.VELLAYANI SUNDARARAJU
SMT.P.MEENAKUMARI

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES (C) DEPARTMENT, SECRETARIATE BUILDING,
THIRUVANANTHAPURAM.

2. C.K.MUKUNDAN,
DIRECTOR (JOINT SECRETARY TO GOVT.),
KERALA STATE TEXTILE CORPORATION LTD.,
SASTHAMANGALAM, THIRUVANANTHAPURAM.

3. KERALA STATE TEXTILE CORPORATION LTD.,
SASTHAMANGALAM, THIRUVANANTHAPURAM,
REP. BY ITS MANAGING DIRECTOR.

4. THE GENERAL MANAGER,
EDARIKKODE TEXTILES, PUTHUPARAMBA (P.O),
EDARIKKODE, MALAPPURAM DISTRICT.

BY ADV. M/S.B.S.KRISHNAN & ASSOCIATE, SC.KSTC
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 LETTER DT 23.9.96 ISSUED BY R4.

P2 CERTIFICATE DT 16.10.97 ISSUED BY R4.

P3 JUDGMENT DT 1.10.03 IN OP.9084/00.

P4 ORDER DT 15.3.04.

P5 RELEVANT PAGE OF THE DIARY OF R3.

P6 PUNCHING CARD OF THE PETITIONER.

P7 LAST MONTH PAY SLIP OF THE PETITIONER.

P8 LETTER DT 25.11.98 OF R3.

P9 LETTER DT 3.6.05 OF R3.

P10 LETTER OF R4 DT 18.7.05.

P11 REPRESENTATION ON EXT.P10 DT 21.7.05.

P12 NEWS ITEM PUBLISHED IN MATHRUBHUMI DHANAKARYAM DT 5.12.05.

P13 NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY DT 21.4.06.

P14 NEWS ITEMS PUBLISHED IN DESABHIMANI DAILY DT 19.4.06.

RESPONDENT'S EXHIBITS:

R3(A) REPORT DT 7.1.06 SENT BY R3.

R3(B) MEMO DT 5.12.05.

R3(C) SHOW CAUSE NOTICE DT 5.1.06.

R3(D) LETTER DT 22.2.06 ISSUED BY R3.

R3(E) CHART SHOWING STRENGTH OF PERSONNEL FIXED IN THE DPC.

R3(F) G.O. DT 5.10.02.

R3(G) G.O. DT 15.3.04.

TRUE COPY

P.A. TO JUDGE

S. SIRI JAGAN, J.

W.P. (C) No. 10551 OF 2004 F

Dated this the 13th day of December, 2006

J U D G M E N T

The 3rd respondent invited applications for appointment of a Supervisor(Textiles) reserved for SC/ST candidates through the employment exchange in 1995. A selection was made from among the candidates sponsored by the employment exchange. To that vacancy the first rank holder namely, T.V.Suresh was appointed. However, the second ranked person namely, the petitioner herein, was offered appointment as a trainee by Ext.P1 offer. According to the petitioner, going by Ext.P1, he was entitled to be absorbed in regular service on completion of the training. Since he was not so absorbed after the period of training, he approached this court by filing O.P.9084/2000, in which, by Ext.P3 judgment, a learned Single Judge of this court directed the Government to consider his representation and pass orders thereon. Pursuant thereto, Ext.P4 order has been passed, in which the claim of the petitioner was rejected on the ground that there is no such vacancy in any units of the Corporation, in which the petitioner could be accommodated. The petitioner now submits that in view of Exts.P8, P9 and P10 produced by him along with the reply affidavit, it is proved beyond doubt that there was a vacancy to which the petitioner can be absorbed. He would particularly rely on Ext.P9, wherein the 3rd respondent had offered to regularize the petitioner, if the petitioner is

willing to withdraw this writ petition. On these averments, the petitioner seeks a direction to regularize the appointment of the petitioner in the post of Supervisor(Textiles) in the 3rd respondent Corporation from the date of appointment and to declare that the petitioner is entitled to the post of Supervisor(Textiles) in the 3rd respondent Corporation, after quashing Ext.P4 order.

2. The counsel for the 3rd respondent while submitting that as a compromise, the 3rd respondent is willing to go by Ext.P9 and appoint the petitioner from the date of such appointment, they would submit that this establishment which is running at a huge loss is not in a position to give retrospective regularization to the petitioner. He would further point out that the vacancy mentioned in Ext.P8 was a vacancy, which was available in Malabar Spinning and Weaving Mills, which has subsequently been closed down and Ext.P4 was passed subsequent to Ext.P8. Therefore, the offer by Ext.P9 itself was only a concession and not because of existence of any regular vacancy as claimed by the petitioner.

3. In answer to this, the counsel for the petitioner submits that by a Government Order it was directed that the Malabar Spinning and Weaving Mills would be re-opened with effect from 29.8.06. However, the learned counsel for the management submits that in spite of that Government Order, the said mill has not yet been re-opened.

4. Now the question raised before me is as to whether the

petitioner is entitled to be regularized with retrospective effect. As the 3rd respondent has mentioned in Ext.P9, they are willing to absorb him but not retrospectively, which the petitioner is not inclined to accept. Therefore, I am constrained to consider whether the petitioner has any right to get absorbed in service with retrospective effect.

5. Clause (1) of Ext.P1 reads thus:

> " *Your appointment will be as trainee and will be for a period of one year from the date of your joining duty in the Mill. On satisfactory completion of training, you may be considered for regular appointment, in the Mills of the Corporation subject to availability of vacancy."*

That does not categorically say that on satisfactory completion of the training, the petitioner would be absorbed in service as of right. It only says that the petitioner would be considered for regular appointment in the Mills of the Corporation subject to availability of vacancy. Therefore, the petitioner does not have any right as such to claim appointment but he can only claim a right to be considered for regular appointment, if other conditions are satisfied like his suitability and availability of vacancy. In the above circumstances, I direct the 3rd respondent to consider the petitioner's case for regular appointment in the Mills as provided in Clause (1) of Ext.P1. With the above direction, writ petition is disposed of.

(S. SIRI JAGAN, JUDGE)

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